

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES,

Plaintiff,

v.

THOMAS T. PROUSALIS, JR.,

Defendant.


03-cr-1509 (DLC)

VERIFIED MOTION FOR ENTRY OF DEFAULT BY CLERK OF THE COURT

The defendant, Thomas T. Prousalis, Jr., appearing *pro se*, hereby files this Verified Motion for Entry of Default by Clerk of the Court.

Respectfully submitted,

June 15, 2018


Thomas T. Prousalis, Jr.

Pro Se

10501 S. Falconbridge Court

Richmond, Virginia 23238

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DATE FILED: 6-20-18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES,

Plaintiff,

v.

THOMAS T. PROUSALIS, JR.,

Defendant.

03-cr-1509 (DLC)

**DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF
VERIFIED MOTION FOR ENTRY OF DEFAULT BY CLERK OF THE COURT**

The defendant, Thomas T. Prousalis, Jr., appearing *pro se*, hereby files this memorandum of law in support of his Verified Motion for Entry of Default by Clerk of the Court.

ARGUMENT

MR. PROUSALIS IS ENTITLED TO AN ENTRY OF DEFAULT BY THE CLERK OF THE COURT AGAINST THE PLAINTIFF IN THIS CASE.

On February 1, 2018, Mr. Prousalis filed a Motion to Vacate Judgment (hereinafter "Motion") with the Court, which was entered in Case No. 03-cr-1509. As part of the Motion, Mr. Prousalis included a Certificate of Service, signed by him, which stated, as follows:

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2018, I mailed the foregoing original and two copies of the motion to vacate judgment of conviction, and an accompanying memorandum of law, to the Clerk of the Court, United States District Court for the Southern District of New York, and a copy of same to the following person, by United States Mail, first-class postage-prepaid:

Hon. Joon H. Kim
Acting United States Attorney
United States Attorney's Office
1 St. Andrew's Plaza
New York, New York 10007

In further support of the Motion, Mr. Prousalis also filed a Verified Statement with the Court on February 7, 2018.

As of the date hereof, the plaintiff has failed to respond to Mr. Prousalis's Motion. Local Criminal Rule 49.1(b) provides that "[a]ny opposing papers shall be filed and served *within fourteen (14) days* after service of process." Also, Rule 49(a), Fed. R. Crim. P., provides that "[s]ervice [of pleadings and papers] must be made in the manner provided for a civil action." Correspondingly, Rule 55, Fed. R. Civ. P., applies specifically to circumstances where a party has failed to answer a pleading. Subsection (a) provides, "[w]here a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). As the Second Circuit has explained, "Rule 55 tracks the ancient common law axiom that a default is an admission of all well-pleaded allegations against the defaulting party." *D. H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 107 (2d Cir. 2006).

Rule 55(a) mandates the entry of default so that "the adversary process [will not be] halted because of an unresponsive party." *H. F. Livermore Corp. v. Aktiengesellschaft Gebrüder Loepfe*,

432 F.2d 689, 691 (D.C. Cir. 1970) (*per curiam*). Thus, Rule 55(a) protects the diligent party. *Id.* at 692. *See also* 5C Wright & Miller, § 1367 at 214 (where the proper course for the party in a case in which an opposing party fails to respond is to move for a default judgment under Rule 55).

The record shows that the plaintiff received proper notice from Mr. Prousalis, and from the public record of this Court, to honor its sovereign duty. The plaintiff failed. “Attorneys [for the plaintiff] who practice in federal court are responsible for knowing the rules governing the practice.” *Perez v. Wells Fargo Bank, N.A.*, No. 13-13853 (11th Cir. 2014).

The party against whom a notation of default is sought (1) is not an infant, in the military or an incompetent person; (2) the party has failed to plead or, otherwise, defend the action; and (3) the pleading to which no response has been made was properly served. *See* Local Civil Rule 55.1.

CONCLUSION


Therefore, in view of the plaintiff’s failure to respond to Mr. Prousalis’s Motion to Vacate Judgment, an entry of default by the Clerk of the Court against the plaintiff is warranted.

VERIFICATION

I hereby declare under penalty of perjury that this Verified Motion for Entry of Default by Clerk of the Court is true and correct, pursuant to 28 U.S.C. § 1746, to the best of my information, knowledge, and belief.

Respectfully submitted,

June 15, 2018




Thomas T. Prousalis, Jr.
Pro Se
10501 S. Falconbridge Court
Richmond, Virginia 23238
(202) 701-9016
N1TP@msn.com

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2018, I mailed the foregoing original and two copies of the Verified Motion for Entry of Default by Clerk of the Court, and an accompanying Memorandum of Law, to the Clerk of the Court, United States District Court for the Southern District of New York, and a copy of same to the following person, by United States Mail, first-class postage-prepaid:

Hon. Geoffrey S. Berman
United States Attorney
United States Attorney's Office
1 St. Andrew's Plaza
New York, New York 10007



Thomas T. Prousalis, Jr.

T. PROUSALIS, Jr
10501 S. Falconbridge Ct
Richmond, VA 23238



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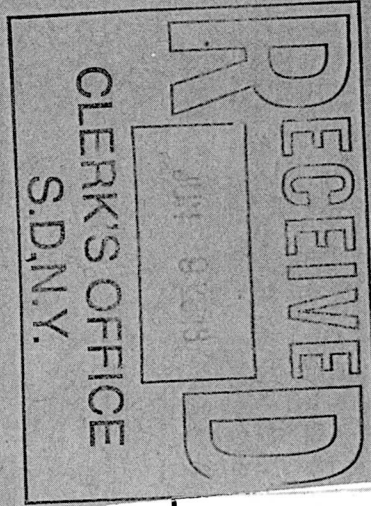
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CLERK'S OFFICE

US DISTRICT COURT

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NEW YORK, NEW YORK

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Pro Se

